

E.I.R.  
EMERY INDUSTRIAL RESOURCES, INC.  
967 South 680 West  
Payson, Utah 84651  
Phone 465-2455 - Fax 465-2455

October 7, 1994

D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program  
State of Utah  
Department of Natural Resources  
Division of Oil Gas and Mining  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203

RE: Your letter dated August 24, 1994 - Cherry Hill Park Mine, S/049/021, Utah County, Utah.

Dear Mr. Hedberg,

In your letter request was made that Emery Industrial Resources, Inc. complete and submit to you within forty-five (45) days of our receipt of your letter, a Notice of Intention to Commence Large Mining Operations. This would put the due date for submitting said notice on 10-10-94. Emery Industrial Resource, Inc. has been working to complete said Notice on/or before the required due date but due to circumstances beyond it's control can not meet the 10-10-94 deadline for notice filing, and hereby requests an extention of an additional 30 days be given to complete and submit said Notice for your review. This additional time will be required to complete Part Two (maps, drawings and photographs) that requires additional survey work.

Also, please find attached to this letter a copy of the Bonding Agreement that Emery Industrial Resources, Inc. has with Utah County, Utah.

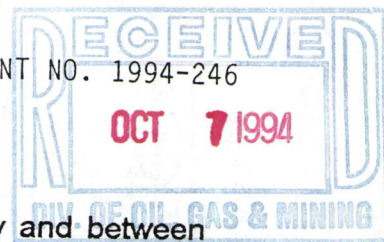
May we be granted this extention as herein requested.

Thank you.

Sincerely,

Dan L. Powell -President





# AGREEMENT

THIS AGREEMENT is made on the 25 day of March 1994, by and between UTAH COUNTY, a body corporation and politic, of the State of Utah, hereinafter referred to as "Utah County"; and Emery Industrial Resources, Inc., hereinafter referred to as "Emery"; and E.J. Stokes, hereinafter referred to as "Stokes".

## THE PARTIES HERETO AGREE AS FOLLOWS:

1. That Emery is the leaseholder of land located in Utah County, State of Utah, which is more particularly described in Exhibit A, which Exhibit is attached hereto and made a part hereof.
2. That Stokes is the owner of the land described above.
3. That Emery hereby warrants that it has sufficient rights and control of said land to rehabilitate the land and otherwise comply with the regulations found in Section 3-28 of the Utah County Zoning Ordinance as currently in effect, which Section is attached hereto as Exhibit B and made part hereto.
4. That Utah County has required that Emery post a bond assuring that the land described in Exhibit A hereto will be completely rehabilitated by Emery according to the regulations contained in Section 3-28 of the Utah County Zoning Ordinance. That the bond amount to be posted by Emery has been set in the amount of \$14400.00, which amount is allocated as follows: \$1600.00 per acre for 9 acres.
5. Emery has established a bank control account at Key Bank, 207 North University Avenue, Provo, Utah, account number 780231536, in an amount in excess of \$14400.00. Prior to issuance of a permit in this matter, Key Bank will issue an Irrevocable Letter of Credit which names the Board of County Commissioners for Utah county as the Beneficiary and which guarantees availability of the required \$14400.00. The above-mentioned Letter of Credit refers to this Agreement and is controlled by the provisions of this Agreement.
6. The amount of \$14400.00 in said account shall be held by the Bank as a guarantee bond and shall be payable to the County Commission on demand as set forth herein and pursuant to the terms of the Letter of Credit. Said amount shall act as a cash bond to assure the rehabilitation of the limestone gravel pit according to the terms of the Utah County Zoning Ordinance. Any principle or interest earned in said account which exceeds the amount of \$14400.00 is not bound by this Agreement and may be withdrawn by the account owner at any time.
7. The Bank will control the above mentioned account for the benefit of Utah County until the County Commission releases its interest in the account, according to the terms of Paragraph 13 of this Agreement, below.

8. Emery agrees to reclaim the site pursuant to the terms of Section 3-28 of the Utah County Zoning Ordinance, including the smoothing and grading of finished slopes not to exceed the critical angle of repose and to leave no undrained depression on the property. Also in accordance with Section 3-28, Emery agrees to cover the areas disturbed with topsoil to a depth of at least one inch and to reseed the areas so covered pursuant to its reclamation plan contained in Exhibit "C" hereto.

9. That the land described in Exhibit A shall be rehabilitated within one year of the date that a business license is not issued for the pit, within one year of the date that excavations cease at the pit, or within 15 years of the date of this Agreement stated on the first line, above, whichever date is first. In the event that rehabilitation has not been completed within the above date period, the Board of County Commissioners may after 90 days of serving notice to Emery to correct said default declare the bond to be defaulted and demand payment as stated below.

10. Emery and Stokes agree for themselves, and their successors and assigns, that if Emery fails to comply with the terms of Paragraph 8 above, that Utah County Officials may enter the property described in Exhibit A and use the bond to rehabilitate the property and bring it into compliance with the standards of the Utah County Zoning Ordinance, provided they have first given proper notice to Emery as per Paragraph 9 above.

11. That this Agreement allows only the operation of the limestone pit on the land described in Exhibit A, and Emery agrees to operate the limestone pit exclusively within the boundaries described for the limestone pit in Exhibit A, and to operate exclusively in accordance with the requirements of Section 3-28 of the Utah County Zoning Ordinance contained in Exhibit B, regardless of the present condition of the land or other events; any violation of this, or any other part of this Agreement by Emery or its agents or assigns, shall be authorization to Utah County to declare the bond in default, and the Board of County Commissioners may after 90 days of serving notice to Emery to correct said default declare the bond to be defaulted and demand payment.

12. If Emery shall fail to rehabilitate within the time frames listed above, then to obtain payment, the County Commission, or the Utah County Attorney acting as an enforcement agent, shall send a demand letter as set forth in the Letter of Credit to the Bank which refers to this Agreement, the sum of money demanded (not to exceed \$14400.00), the statement that the bond is in default, a brief statement of the nature of the default, and a statement that Emery failed to rehabilitate after being given proper notice, and the address to which money shall be sent. The County Commission or Utah County Attorney shall send a copy of the demand letter to Emery and Stokes. The Bank shall deliver the sum within 30 days

after its receipt of the demand letter and Emery has been notified as stated herein.

13. Otherwise, when the pit is rehabilitated, in a timely manner and in accordance with the standards of the Utah County Zoning Ordinance contained in Exhibit B, the County Commission shall declare that the requirements of this Agreement have been fulfilled, and shall send a written Notice of Completion to the Bank, with a copy to Emery, which releases the County Commission's claim to the said bank account and authorizes the Bank to restore the funds to the account owner. In the event Emery permanently rehabilitates a portion of the active limestone gravel pit in accordance with the standards of Section 3-28 of the Utah County Zoning Ordinance so that a lower bond amount would be required by said Ordinance, Emery may make application to Utah County to release a portion of the required bond. Once a portion of land is rehabilitated in accordance with Section 3-28 of the Utah County Zoning Ordinance, it may not be further disturbed without obtaining a further permit and providing an additional bond.

14. That in the event it becomes necessary to bring legal action to enforce the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorneys fee and associated court costs as determined by the Court.

In witness whereof, this Agreement has been executed effective the day and year first mentioned above.

EMERY INDUSTRIAL RESOURCES, INC.

By: \_\_\_\_\_

Dan L. Powell - President

By: \_\_\_\_\_

E.J. Stokes

COUNTY COMMISSION:

By: \_\_\_\_\_

Chairman

By: \_\_\_\_\_

Commissioner

By: \_\_\_\_\_  
Commissioner

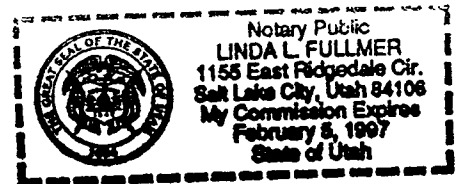
Attest:  
J. Bruce Peacock  
Clerk/Auditor

By: Shirley B. Englund  
Deputy

NOTARY

On the 25<sup>th</sup> day of March, 1994, personally  
appeared before me, Dan L. Powell the President of Emery  
Industrial Resources, Inc., the signer of the above  
instrument, who duly acknowledged to me that he executed  
the same.

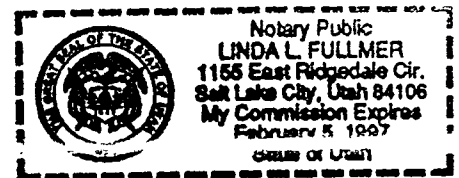
Linda L. Fullmer  
Notary Public  
Residing at: Salt Lake City, Utah  
Commission expires: February 5, 1997



Notary

On the 25<sup>th</sup> day of March, 1994, personally  
appeared before me, E.J. Stokes the signer of the above  
instrument, who duly acknowledged to me that he executed  
the same.

Linda L. Fullmer  
Notary Public  
Residing at: Salt Lake City, Utah  
Commission expires: February 5, 1997



Approved as to form:

By: Mark O. Grant  
Deputy County Attorney

## EXHIBIT A

Beginning South  $43^{\circ}06'19''$  East 1648.11 ft. and North 100 ft. from the Northwest corner of Section 36, Township 11 South, Range 8 East S.L.M. to P.O.B.; thence North 140 ft.; thence East 300 ft.; thence South 240 ft.; thence East 80 ft.; thence South 300 ft.; thence West 254 ft.; thence South  $13^{\circ}$  West 205 ft.; thence West 426 ft.; thence North  $13^{\circ}$  East 205 ft.; thence North 400 ft.; thence East 300 ft. to P.O.B. containing 9.00 acres more or less.



However, if the Zoning Administrator, with the assistance of the County Surveyor, cannot determine that the above criteria are met based on the available information, an engineering study and report by a Professional Engineer licensed to practice in the State of Utah may be obtained by the applicant and submitted for approval by the Zoning Administrator, after favorable review of the County Surveyor.

- B. No use or structure (except flood control works or irrigation diversion dams) shall be permitted in any flood channel if such use or structure will adversely affect normal flow, will increase flooding of land above or below the property, will increase erosion within or adjoining the flood channel, will cause diversion of flood waters in a manner more likely to create damage than does flow in a normal course, will increase peak flows or velocities in a manner likely to add to property damage or hazards to life, or will increase amounts of damaging materials (including those likely to be injurious to health) which might be carried downstream in floods.

### 3-27: EXPOSED SLOPES TO BE LESS THAN THE CRITICAL ANGLE OF REPOSE

No slope resulting from a cut or fill made in mining, road building, grading, or other construction shall exceed the critical angle of repose unless such is granted a special exception by the Board of Adjustment under zoning section 7-21. Such special exception shall not be granted unless the owners can show that they have adopted all practical measures to reduce the slopes to less than the critical angle of repose by selecting an alternate location, by planting the slopes with vegetative material, or by covering the slopes with burlap, wire mesh, or other material which will have the effect of preventing the soil from moving under the force of gravity until vegetative material becomes established. Where terrain leading to an electric transmission tower will not permit the installation of such tower without the slopes of construction roads exceeding the critical angle of repose, air transport or other methods must be used in lieu of such construction roads.

### 3-28: OPEN PIT EXTRACTION OF EARTH PRODUCTS

#### A. INTENT

The intent and purpose of this section is to provide for the extraction of earth products using surface mining methods, for stockpiling mined materials, and for the placement of overburden and leftover earth materials in mining waste dumps, while protecting the environment, the rights of neighboring property owners, and roads and other public facilities from unusual wear or damage.

#### B. SCOPE

The provisions of this section shall apply to all sites where sand, gravel, clay, topsoil, rocks or minerals will be extracted by an open pit method; to all sites where such extracted earth products are stockpiled; and to sites where overburden and leftover earth materials are placed in mining waste dumps.

Exception: sites having a valid, current permit at the time of passage of this ordinance shall be completed according to the terms of such permit and any bonding agreements appurtenant thereto.



C. CONDITIONS

The Zoning Administrator shall issue a permit for an open pit, a stockpile, or a waste dump only when all of the following are met:

1. The site lies in a zone where such use is a permitted use or where it may be approved as a special exception by the Board of Adjustment and has received such approval.
2. The applicant has presented an accurate site plan that shows the topography, utilities, roads and structures on the site at both the pre-permit stage and the stage after completing the excavation and rehabilitation of the pit.
3. There shall be no limit as to the area or portion of a lot that may be disturbed and involved in the extraction process as long as the entire disturbed area has been included in the rehabilitation bond required in zoning section 3-28-D; also there shall be no limit to the time period used to complete the extraction of material.

Exception: upon finding such is necessary to protect the property values of neighboring property interests or to preserve desirable aesthetics, the County Commission may require as part of the bond agreement that the extent of the disturbed area at the site of extraction shall be no larger than seven (7) acres at any one time and/or may require that the extraction process shall cease and the site rehabilitated (whether or not all materials have been obtained) within a specific time period, not to be less than 5 years. When limited to 7-acre units, the pit, or portions of it, shall be closed, rehabilitated, and approved by the Zoning Administrator as meeting the standards of this ordinance before further areas are disturbed.

4. The standards for rehabilitating the site shall be:
  - a. The side walls of a pit or mound shall be smoothed and evenly contoured, and the floor of a pit or top of a mound shall be flattened and leveled.
  - b. Mounds of fill shall not remain after rehabilitation of an extraction operation, even if utility poles must be relocated at the operators expense; mounds may only be permitted in conjunction with a mine waste dump.
  - c. No depression which lacks a surface outlet, nor pond or intermittent lake on the floor of the pit, shall exist on the rehabilitated site.
  - d. No slope shall be steeper than the critical angle of repose (eg. 33 degrees for gravel deposits).
  - e. All areas shall be covered with a one-inch or thicker layer of topsoil and reseeded with a hardy plant material having a sufficient concentration to screen at least 25% of the exposed surface from view.



Exception: desert areas located in the M&G-1 Zone which naturally lack soil or vegetation shall be restored to a surface that corresponds with the native condition rather than adding soil and/or reseeding.

5. When the pit (or mound) and rehabilitation bond are proposed to cover less than the entire area of the lot, the operator shall place clearly identifiable survey markers on the outer boundaries of the bonded area and shall maintain such until the bond is released by Utah County. The County Commission may request an annual on-site investigation and report of the County Surveyor to determine whether the terms of the grading plan, rehabilitation plan and bond agreement are being met.
6. Surface mining shall proceed in an orderly manner from the outer boundaries and lower slopes of the property inward and upward so the property can be rehabilitated in the older areas of the pit while new areas are being opened up.
7. Dust generated in the extraction and processing of the earth products shall be kept under control by the operator and contained on-site by paving main roads in the pit, wetting extraction areas and loaded trucks, placing berms or landscape screening for protection from the prevailing winds and other suitable measures.
8. All cuts and fills shall be set back from the property boundary or boundary of the approved extraction site a distance of at least five (5) feet.
9. The applicant shall present an off-site plan of any local public streets which loaded trucks will use in gaining access to state highways and arterial streets. The pit operator shall be liable for any severe damage his operation causes to such local roads.
10. The pit and/or extraction operation shall not constitute a nuisance according to Chapter 12 [Nuisances] of the Utah County Code.

#### D. BOND

1. A cash or surety bond in the amount set by the County Commission, but not less than \$1600 per acre, shall be posted by the applicant to guarantee compliance with the provisions of this section and the nuisance provisions of Chapter 12 of the Utah County Code. A violation of either provisions shall be sufficient grounds for forfeiture of the entire bond to Utah County.
2. The County Commission, to take into account inflation or to aid in monitoring compliance with this section, may set time intervals after which the bond amount shall be reevaluated based on current costs of rehabilitation and the amount of rehabilitation or excavation that has occurred during the interval.
3. Any bond shall be accompanied by an agreement between the Utah County and the applicant (plus the property owner if the latter is

not also the applicant) wherein the county agrees to return the bond at the completion of work if the standards of this section have been met, and the applicant and property owner agree that the bond shall be forfeited in the event of noncompliance and to permit the county to enter upon the land to close operations and rehabilitate the excavated or filled areas. Any ambiguity or deficiency in the wording of the bond agreement shall be interpreted to include the terms of this section.

4. It shall be a violation to not complete the rehabilitation within one year of cessation of operations and grounds for forfeiture of the bond. The "trigger" for such forfeiture shall be any two (2) year period of time in which no material is extracted, or any one (1) year period when there is no current business license or valid zoning compliance permit in effect.
5. Notwithstanding the forfeiture of the bond, the applicant shall retain individual responsibility to fully comply with this ordinance, the terms of the permits issued thereunder, and the balance of any expense not covered by the bond to rehabilitate the property.

#### E. PERMITS

In addition to the business licenses and building (or grading) permits required elsewhere in county ordinances, any open pit operation shall be required to have a current zoning compliance permit. No zoning compliance permit for an open pit operation shall have a period of validity past December 31 of each calendar year, but the permit shall be automatically renewed if the pit is found to be in compliance with the standards of this ordinance. The Zoning Administrator, with the advice of the County Surveyor, shall determine if such compliance exists.

**Key Bank of Utah**  
A KeyCorp Bank



International Department  
Key Bank Tower, Suite 2007  
50 South Main Street  
P.O. Box 30815  
Salt Lake City, Utah 84130-0815  
(801) 535-1159  
Fax: (801) 536-3004

**Kari Stevenson**  
Vice President

August 24, 1994

Board of County Commissioners  
for Utah County  
351 West Center Street  
Provo, Utah 84604

We are pleased to enclose:

- ☒ The original of our Letter of Credit number \_\_\_\_\_ established in favor of Board of County Commissioners for Utah County.
- ☐ The original amendment to our Letter of Credit number \_ established in favor of \_
- ☐ The amendment forms an integral part of the credit and must be attached thereto. By signing and returning this form you acknowledge that you are in agreement with the terms of the amendment
- ☐ Please deliver the original instrument to the beneficiary, retaining a copy for your records.
- ☒ Please acknowledge receipt and your acceptance by signing and returning the original of this letter to the above address.
- ☐ Other:

Key Bank of Utah,

Toni Glines  
Letter of Credit Officer  
International Department

Received by:

\_\_\_\_\_  
Authorized Signature, Title and Date



AUGUST 24, 1994  
IRREVOCABLE DOCUMENTARY CREDIT  
NUMBER,

**APPLICANT**

Emery Industrial Resources  
967 South 680 West  
Payson, Utah 84651-3151

**BENEFICIARY**

Board Of County Commissioners  
for Utah County  
351 West Center Street  
Provo, Utah 84604

**ADVISING BANK**

None

**DATE AND PLACE OF EXPIRY:**

August 24, 1995, at the counter  
of Key Bank of Utah  
International Department  
currently located at 50 South  
Main Street, Salt Lake City,  
Utah 84144

**AMOUNT:** USD14,400.00

Credit available with us by payment of draft(s) drawn at sight on Key Bank of Utah, Salt Lake City, Utah, bearing this letter of credit number, and accompanied by the documents detailed herein.

1. Original of this letter of credit.
2. Written statement signed by an authorized representative of Board of County Commissioners for Utah County stating that: "Emery Industrial Resources has failed to comply with the terms and conditions of their agreement dated March 25, 1994, between Utah County and Emery Industrial Resources, Inc."

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We engage with drawer, endorser, and bona fide holder that drafts drawn in compliance with the terms of this credit will be honored on presentation to the above drawee.

Except as otherwise provided herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, which is incorporated into the text of this letter of credit by this reference.

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*Roger K. Nordgren*  
Roger K. Nordgren  
Vice President

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*David L. Brown*  
David L. Brown  
Senior Vice President